

OPEN MEETING ITEM

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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Executive Director

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ARIZONA CORPORATION COMMISSION

2009 AUG - 1 A 10:30

AZ CORP COMMISSION
DOCKET CONTROL

DATE: AUGUST 7, 2009

DOCKET NO: T-03342A-07-0612

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

TALK AMERICA, INC., D/B/A CAVALIER TELEPHONE
AND D/B/A CAVALIER BUSINESS COMMUNICATIONS
(CANCEL CC&N/RESELLER/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 17, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 25, 2009 and AUGUST 26, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

AUG - 7 2009



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION
9 OF TALK AMERICA, INC., D/B/A CAVALIER
10 TELEPHONE AND D/B/A CAVALIER
11 BUSINESS COMMUNICATIONS, FOR THE
12 CANCELLATION OF ITS CERTIFICATES OF
13 CONVENIENCE AND NECESSITY FOR
14 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03342A-07-0612

DECISION NO. _____

ORDER

11 Open Meeting
12 August 25 and 26, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. Talk America, Inc., d/b/a Cavalier Telephone and d/b/a Cavalier Business
19 Communications ("TAI" or "Company"), has a Certificate of Convenience and Necessity
20 ("Certificate") to provide competitive resold local exchange telecommunications services within
21 Arizona pursuant to Decision No. 61537 (February 19, 1999). In Decision 64084 (October 4, 2001),
22 the Commission granted TAI a Certificate to provide competitive resold interexchange
23 telecommunications services in Arizona. In Decision No. 66788 (February 13, 2004), the
24 Commission granted TAI a Certificate to provide competitive facilities-based local exchange
25 telecommunications services in Arizona.

26 2. On October 19, 2007, the Company filed with the Commission an application for
27 cancellation of its Certificate to provide facilities-based local exchange telecommunications services
28 pursuant to Decision No. 66788 ("Application"). TAI states that it does not serve any local exchange
customers in Arizona and did not collect any advances, prepayments and/or deposits. The Company

1 also requests that the Commission cancel its Arizona Tariff No. 6, and requests that TAI be relieved
2 of its obligation to maintain a \$100,000 performance bond for facilities-based local exchange service.

3 3. TAI desires to continue to provide competitive resold interexchange service in
4 Arizona pursuant to the authority granted it in Decision No. 64084.

5 4. On December 21, 2007, Staff issued its First Set of Data Requests.

6 5. On May 19, 2008, TAI responded to Staff's Data Requests.

7 6. On July 17, 2009, Staff filed its Staff Report recommending approval of TAI's
8 Application.

9 7. According to the Company's Data Request Responses, after TAI obtained its
10 Certificates to provide local exchange services, its business plan changed and the Company never
11 initiated sales of resold or facilities-based local exchange service. Staff confirmed through TAI's
12 Annual Reports filed for the year ended December 31, 2007, and earlier, that TAI had no Arizona
13 access lines in service to provide facilities-based local exchange service. As such, Staff recommends
14 cancellation of TAI's facilities-based local exchange Certificate, as well as its resold local exchange
15 service. TAI has not objected to Staff's recommendation.

16 8. The Company requests a waiver from compliance with the terms of Arizona
17 Administrative Code ("A.A.C."), R-14-2-1107 requiring the Company to provide notice to customers
18 of its discontinuation of service, a plan for the refund of deposits, a list of alternate providers, and to
19 publish notice of the application. TAI requested a waiver of these provisions because it never
20 provided either resold or facilities-based local exchange service to any customers in Arizona and has
21 not collected any advances, prepayments and/or deposits.

22 9. Staff concurs with TAI's reasoning and recommends that Company compliance with
23 the provisions of A.A.C. R-14-2-1107 should be waived.

24 10. As discussed in Decision No. 67404 (November 2, 2004), it would render
25 A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and plain language to
26 exempt a Company from the requirements of the rule because it has no customers due to its
27 discontinuation of service. However, as discussed in that Decision, the intent of the rule is to ensure
28 that existing customers have advance notice of a telecommunications provider's pending plan to

1 discontinue service such that they will be afforded an opportunity to procure service through an
2 alternative provider prior to such discontinuance.

3 11. The Company has never had any Arizona local exchange customers and did not collect
4 any advances, prepayments and/or deposits. Under these circumstances, the requirements of A.A.C.
5 R-14-2-1107 should be waived.

6 12. TAI also requested to be relieved of its obligations to maintain its \$100,000
7 performance bond and cancellation of all TAI's Arizona tariffs, except Arizona Tariff No. 5, which
8 relates to the Company's provision of resold interexchange telecommunications services.

9 13. TAI has approximately 496 resold interexchange customers in Arizona, but Staff notes
10 that TAI's Arizona Tariff No. 5 prevents the Company from collecting advances, prepayments and/or
11 deposits.¹ Staff recommends that, if the Commission cancels TAI's Certificates for provision of
12 resold and facilities-based local exchange service, TAI's performance bond also should be cancelled.
13 In that instance, Staff also recommends cancellation of TAI's Arizona Tariffs Nos. 2, 3, 4, 6, and 7.

14 14. The Commission's Consumer Services Section of the Commission's Utilities Division
15 reported that from January 1, 2005, through October 29, 2008, there were thirteen complaints filed
16 against TAI. Each of the thirteen complaints have been resolved and closed. There have been no
17 inquiries or opinions filed against TAI.

18 15. The Commission's Corporations Division reported that TAI is in good standing. The
19 Company has no compliance delinquencies.

20 16. Staff's recommendations are reasonable and should be adopted.

21 CONCLUSIONS OF LAW

22 1. The Company is a public service corporation within the meaning of Article XV of the
23 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

24 2. The Commission has jurisdiction over the Company and the subject matter of the
25 Application.

26 _____
27 ¹ The Decision granting TAI authority to provide resold interexchange telecommunications services prohibits TAI from
28 collecting prepayments, advances, or deposits and requires that, if in the future the Company wants to charge any
prepayments, advances, or deposits, it must file information with the Commission that demonstrates TAI's financial
viability. The Commission will review the information and make a determination regarding the charges.

3. The cancellation of the Company's local exchange Certificates is in the public interest.

4. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding Certificates of Convenience and Necessity for certain telecommunication services without a hearing.

5. The requirements of A.A.C. R14-2-1107 should be waived in this case.

6. Staff's recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Application of Talk America, Inc., d/b/a Cavalier Telephone and d/b/a Cavalier Business Communications, for the cancellation of its Certificate of Convenience and Necessity to provide competitive resold local exchange telecommunications services, pursuant to Decision No. 61537 (February 19, 1999), and its Certificate of Convenience and Necessity to provide competitive facilities-based local exchange telecommunications services in Arizona, pursuant to Decision No. 66788 (February 13, 2004), is hereby approved, and those Certificates of Convenience and Necessity are hereby cancelled.

IT IS FURTHER ORDERED that Talk America, Inc., d/b/a Cavalier Telephone and d/b/a Cavalier Business Communications,' Arizona Tariffs Nos. 2, 3, 4, 6, and 7 are hereby cancelled.

IT IS FURTHER ORDERED that Talk America, Inc., d/b/a Cavalier Telephone and d/b/a Cavalier Business Communications, is hereby authorized to cancel its \$100,000 performance bond.

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1 IT IS FURTHER ORDERED that Talk America, Inc., d/b/a Cavalier Telephone and d/b/a
2 Cavalier Business Communications,' Certificate of Convenience and Necessity to provide
3 competitive resold interexchange telecommunications services pursuant to Decision No. 64084
4 (October 4, 2001), remains in full force and effect.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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9 CHAIRMAN

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____, 2009.

18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____
21

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23 DISSENT _____
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1 SERVICE LIST FOR:

TALK AMERICA, INC., D/B/A CAVALIER
TELEPHONE AND D/B/A CAVALIER BUSINESS
COMMUNICATIONS

3 DOCKET NO.:

T-03342A-07-0612

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